IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 218 of 1994

1. Ramesh Marutrao Patil
2. Dilip Ramchandra Doiphode ..Appellants

V/s

The State of Maharashtra .. Respondent

Ms S.D.Khot with N.V.Pradhan for Appellants

Shri V.B.Konde Deshmukh,APP for Respondent

CORAM:S.S.PARKAR, AND

S.R.SATHE, JJ.

DATED:14th December 2004

ORAL JUDGMENT : (Per S.R.Sathe,J.)

1. The Appellants, original accused nos.3 and 9 in Sessions Case No.155 of 1988 who are convicted for the offence punishable under Section 302 read with 34 of IPC and sentenced to suffer imprisonment for life and to pay fine of Rs.500/- each in default to suffer r/i for 2 months, by the Court of 2nd Additional Sessions Judge, Kolhapur, have preferred this appeal.

2. The brief facts giving rise to this appeal are

as under :-

. One Dinkarrao Bhopale was having a factory by name Vaibhav Safe and Steel Works near Sambhaji Bridge at Kolhapur. The said factory was situated in a basement. Above the said basement there was one show room. Son of Dinkarrao Bhopale viz. Raju (deceased in the instant case) used to sit in the said show room and was doing business of selling television sets. He used to get the said work done through his friends Sagar Lohar and Ashok Chougule. It is alleged that about one month prior to the incident the said Sagar Lohar and Ashok Chougule were involved in committing murder of one Ramesh Doiphode, the brother of present appellant no.2, Dilip Doiphode. Since the said murder, accused Dilip and his colleagues were under impression that deceased Raju had given shelter to those two persons viz. Sagar Lohar and Ashok chougule and as such they had some grievance against deceased. Not only that but after the murder of Ramesh Doiphode some persons had pelted stones on the said show room as a result of which the show room was closed by deceased and his father Dinkarrao Bhopale Raju had gone at some other place. A week prior to 30-7-1988 Raju had returned to Kolhapur and two days prior to the incident he had opened the show room.

3. On the day of incident i.e. on 30-7-1988 at

about 2-00 p.m. deceased Raju collected the keys from the factory and opened the show room. The prosecution whiteness nos.10, 11, 13 and 16 and some other persons were working in the factory. At about 2-30 p.m. complainant Prakash P. Tippe heard the shout of Raju, saying "----------" (I am not, leave me, I am not concerned). Hearing the said shout complainant and other PWs mentioned above came out of the factory. At that very time deceased Raju came from the show room side lane and stood in front of the shutter of the factory. He was followed by the present appellants accused as well by some other persons. At that very time, accused Ramesh Patil assaulted Raju on his right arm with Sattur while accused Dilip Doiphode assaulted on right thigh, back and legs with knife. The other accused persons also assaulted deceased Raju with sticks. As a result of the said assault Raju sustained bleeding injuries. When these prosecution witnesses had gathered there, the assailants started running towards Sambhaji Bridge. Deceased Raju who had sustained injuries also followed them. After crossing few steps when he reached near tea stall he fell on the ground. By that time prosecution witnesses Vinayak Lohar and PW 12 Mahadeo Lower had followed him. The said 2 witnesses immediately halted one rickshaw at the said place and took injured Raju to C.P.R.Hospital. Doctor on duty examined Raju and he was declared to

be dead. Ward boy Balasaheb S. Kawale was asked to give information to Police. Accordingly the said Balasaheb Kawale Exh.17 gave information (Vardi) Exh.58 to Police regarding the death of Raju. At about 3-15 p.m. father of deceased Raj had also reached to CPR Hospital. The complainant Prakash P. Tippe, who had seen the incident, went to Laxmipuri Police Station and there he lodged complaint Exh.49. The said complaint was registered by Police Inspector Sahebrao Dadarao Labade and offence was registered at C.R.no.77/1988 against the present accused as well against 9 other persons. After registering the offence P.I. Labade went to the hospital and drew inquest panchnama Exh.20. He then went to place of offence and drew panchnama of the place of offence Exh.29. He attached the clothes of deceased which were produced before him. Then he recorded the statements of witnesses and on the same day he arrested accused Ramesh. On 31-7-1988 when the said accused was in Police custody he made a statement before Police that he would produce banian (T shirt), which he was wearing at the relevant time and sattur concealed by him. Police therefore called panchas and in the presence of panchas dew memorandum. Then accused Ramesh laid Police and panchas to Shahupuri lane no.5 and there from the room of one Umesh Satam he produced sattur and banian (T shirt) concealed behind the photo. Police Inspector also recorded statements of other

witnesses and arrested accused Dilip and other on 3-8-1988. When accused Dilip Doiphode was in Police custody he made a statement before the Police that he would produce the knife concealed by him. Police therefore drew the necessary memorandum and the said accused laid Police and panchas to one school and there he produced the knife which was concealed in the whole of a wall of the stair case. The police attached the same under panchnama. The attached articles were then sent by Police to C.A. and after completion of the investigation Police submitted charge sheet against the accused in the Court of J.M.F.C., Kolhapur for the offence punishable under Sections 141, 147,148,149 and 302 against 11 accused persons. Finding that accused are charge sheeted for the offences punishable under Section 302 of IPC which is exclusively triable by the Court of Sessions, the learned J.M.F.C., Kolhapur committed the case to Sessions Court, Kolhapur.

4. The 2nd Additional Sessions Judge, Kolhapur framed charge Exh.2 against all 11 accused persons for the offence mentioned above. The charge was read over and explained to the accused. Accused pleaded not guilty and claimed to be tried. The defence of the accused is of total denial.

5. In order to bring home the guilt of the accused, the prosecution examined as many as 20 witnesses,

consisting of in all 9 pancha witnesses, 5 eye witnesses viz. complainant - Prakash Pandurang Tippe Exh.48, Vinayak Annasaheb Lohar, Exh.50, Mahadev Ramchandra Lohar, Exh.51, Nabi Nijam Shaikh, Exh.52 and Nandkumar Vasantrao Jadhav, Exh.56. Prosecution also examined witness Maruti Anna Pawar, rickshaw driver, Exh.54, Umesh Parashram Satham, Exh.55, Ward boy -Balasaheb Shamrao Kawale Exh.57, Police Head Constable Avadhut Venkatesh Bhat Exh.59, who carried the articles to C.A., Medical Officer Dr. Pushpanjali D. Patil, Exh.63 and Investigating Officer Sahebrao D. Labade Exh.68. Prosecution produced panchanama of the place of offence Exh.30, panchanama of attachment of clothes of deceased as well panchanama with regard to production of banian (T shirt) and sattur so also the panchanama regarding attachment of knife. Prosecution also produced post mortem notes Exh.64 and C.A. report at Exh.88. After considering the entire evidence adduced by the prosecution, the learned trial Judge found that there was absolutely no evidence against accused nos.1,2,7,8, 10 and 11. He found that there was some evidence against rest of the accused viz. accused nos.3,4,5, 6 and 9. However, according to him so far as accused nos. 4, 5 and 6 were concerned, there was no sufficient evidence to connect them with the alleged crime. He also found that the prosecution has totally failed to prove that at the relevant time there was an unlawful

assembly. He therefore acquitted accused nos.1, 2, 4, 5, 6, 7, 8, 10 and 11 from all the charges levelled against them and only convicted accused nos.3 and 9 i.e. present appellants for the offence punishable under Section 302 read with 34 of IPC and awarded the sentence mentioned above.

6. Being aggrieved by the said order of conviction and sentence the original accused nos.3 and 9 have filed the present appeal. In this appeal before us, Ms Khot, learned Advocate for the Appellant has argued only 3 points. Firstly, she submitted that the learned trial Judge has not properly appreciated the evidence on record and has wrongly relied on the interested witnesses viz. P.W.10, PW 11, PW 12, PW 13 and PW 14. According to her the alleged incident had taken place in the bazar day and there were shops near the place of incident. However, none of them was examined and only the employees of deceased Raju were examined. She therefore submitted that the evidence of above mentioned eye witnesses should not have been believed. She further canvassed before us that all the prosecution witnesses had stated that at the relevant time all the accused persons assaulted Raju. So, under such circumstances there was no sufficient evidence to prove that injuries sustained by deceased Raju were caused only at the hands of accused nos.3 and 9. Lastly, she submitted that Dr.Pushpanjali Patil

Exh.63 has stated that none of the injuries sustained by deceased Raj was sufficient in the ordinary course of nature to cause death and not a single injury was caused on any vital part of the deceased. She therefore submitted that there was no intention on the part of the accused to commit murder and as such the case will not fall under Section 302 of IPC. She submitted that it may be culpable homicide not amounting to murder and as such conviction should be only under Section 304 Part II of IPC.

7. As against this Shri Konde Deshmukh, learned APP supported the judgment and order passed by the trial Judge. He submitted that there was sufficient evidence to prove the guilt of the accused as 5 eye witnesses have deposed against the present accused. Besides this there was corroborating evidence regarding weapons used in the commission of offence as the same have been produced by the accused under Section 27 of Evidence Act. Blood found on the said weapons was of B group which was of the deceased. He therefore submitted that the appeal be dismissed.

8. From the perusal of evidence, it appears that it is not in dispute that about a month prior to the incident in question, murder of the brother of accused Dilip had taken place and in connection with the said murder Ashok Chougule and Sagar Lohar,

friends of deceased Raju were involved. It is also admitted that P.W. 10 to 13 and 16 are working in the factory of Dinkarrao Bhopale, father of deceased Raju. P.W. Vinayak A. Lohar Exh.11, P.W. Mahadev R. Lohar Exh.12 and Umesh P. Satham, Exh.15 have stated that on the day of incident when they heard the shout and went out of the factory and saw Raju being assaulted and thereafter running towards Sambhaji Bridge. They also followed him. He fell near tea stall and then P.W.Vinayak Lohar and Mahadeo Lohar took him in a rickshaw to C.P.R. Hospital. However, doctor on duty after examining Raju declared him to be dead. The post mortem report Exh.64 shows that following 9 injuries were noticed on the said dead body: i. Abrasion over left maxillary region 2 cm x 1 cm Red colour.

ii. Incised wound over right arm upper 1/3 lateral aspect, transverse 7 cms x 2 cms x bone deep, crack fracture right humerus.

iii. Incised wound - lower part of medial aspect of left thigh, 6 cms above medial condyle of left femur extending into popletal fossa 4 cms x 1 cm x bone deep.

iv. Incised wound Anterior aspect of lower 1/3 of right thigh 6 cms above the knee joint 2 cm x 1 cm x muscle deep.

v. Linear abrasion at inter scapular region 1 cm left to the midline 4 cm x 3 mm vertical

vi. Abrasion over interior angle of left scapala Transerse 4 cm x 3 mm

vii. Incised wound at midline over 1st lumber vertebra vertical 3 cm x 1/2 cm x bone deep.

viii. Incised wound over lower outerquadrant of left gluteal region extending to left hip joint 3 cm x 2 cm x 1 cm.

ix. Incised wound lateral border of left papleteal fossa 4 cm x 1 cm x bone deep extending into papleteal fossa.

9. Doctor has opined that all those injuries were anti mortem and could be caused by the weapons before the Court. Taking into consideration the nature of those injuries and the manner in which the same were sustained and Raju died, it is very clear that death of Raju is homicidal. In fact it is not the contention of the accused that death of Raju was not homicidal.

10. The main and material question is whether the death was caused due to injuries sustained as a

result of assault made by the present accused. At the outset it maybe mentioned that there are as many as 5 eye witnesses to the incident. Prosecution witnesses no.10 complainant Prakash P. Tippe has specifically stated that on the day of incident at about 2-30 p.m. he and his co workers were working in the factory which is just below the show room. He heard Raju shouting "----------" (I am not, leave me, I am not concerned). Hence he went out of show room and at that time they found Raju coming from show room side in front of shutter of the factory. He was followed by the present accused as well as other 3 persons. The accused Ramesh M. Patil was having a sattur in his hand while accused no.9 Dilip Doiphode was holding knife. Ramesh assaulted on the right arm of the deceased Raju with sattur while Dilip Doiphode assaulted on right thigh, back and leg with knife and as a result of the same Raju sustained bleeding injuries. This version of the complainant Prakash Tipee Exh.48 is fully corroborated by other eye witnesses viz. Vinayak A. Lohar Exh.50, Mahadev R. Lohar, Exh.51, Nabi Nijam Shaikh Exh.52 and Nandkumar V. Jadhav, Exh.56. It is pertinent to note that admittedly all the above mentioned eye witnesses were working in the factory at the relevant time. They have also stated that when they heard the shout of deceased Raju they went out of the factory and at that time

Raju came running in front of the shutter. He was followed by accused persons and then accused Ramesh who was holding sattur in his hand and Dilip Doiphode who was also having knife, assaulted Raju with the weapon and as a result of the same he sustained bleeding injuries. If we see the panchnama of place of offence Exh.30 then also it is very clear that blood was noticed on the floor at the place of offence and on way upto tea stall where from Raju was taken in a rickshaw to the hospital by PW 121 Vinayak A. Lohar and PW 12 Mahadev R. Lohar. The evidence of these 5 witnesses is not at all shaken or shattered in the cross examination. Mere one vague suggestion has been put to them in the cross examination that they did not know about the incident and they were not present when the incident took place. An attempt has been made to show that injuries sustained by Raju were not actually caused as a result of assault made by the present appellant. It was argued on behalf of the defence that in complaint the complainant, and other eye witnesses in their statements before Police have stated that Dilip and other accused persons assaulted Raju with knife. When such is the position how one can say that a particular injury sustained by deceased Raju was caused by knife blow given by Dilip. It is true that in complaint as well as in the statements, the complainant and other witnesses have stated that Raju was assaulted with

knife by Dilip and some other persons. However, it is pertinent to note that while giving deposition, those witnesses have categorically stated that they saw Dilip assaulting Raju with knife on right thigh , back, leg etc. So one thing is clear that these witnesses have not made any improvement in their earlier version nor it can be said that there was no contradiction in their evidence. Merely because some other accused persons who were named by them either at the time of filing complaint or at the time when their statements were recorded by Police have not been given at the time of evidence, we cannot jump to the conclusion that their entire testimony is not acceptable or believable. We cannot ignore the fact that incident had taken place in the year 1988, while the witnesses deposed after a period of about 6 years. So it is quite possible that during that period they might have forgotten minor details or minor acts committed by some other accused but that by itself is not sufficient to raise any suspecision about the credibility of these witnesses. Much is made about the fact that they are interested witnesses as they are employees of the deceased Raju. However, at the same time it must be noted that they are the most natural witnesses. As the incident has taken place in front of their factory during working hours, their presence at the said place cannot be doubted. It is true that from the evidence on record it appears

that where the place of offence there are some other shops but no other shop keeper is examined. However, it must be noted that no specific question is put to prosecution witnesses that at the relevant time the said shops were open and that alleged incident was also observed by some other persons. On the contrary it appears that it was Saturday and on that day the shops in that locality were in fact close. So under such circumstances merely because there are no other witness, it cannot be said that the testimony of these witnesses should not be accepted particularly when we find that the same is cogent, consistent and convincing. It is worth to note that eye witness Prakash Tippe Exh.48 has lodged the complaint Exh.49 practically immediately after the incident in which he has clearly named the present accused and their overt acts. Due importance has to be given to this fact which lends support to version of eye witnesses.

11. It has come on record that about one month prior to the incident brother of accused no.9 Ramesh Doiphode was murdered and the friends of Raj were involved in the same. As a result of that Dilip Doiphode and others had doubt that Raju had given shelter to those Ashok Chougule and Sagar Lohar. After the said murder some persons had pelted stones on the show room. This had happened twice. So, this also indicates that accused Dilip had a grudge

and grievance against deceased Raju and there was enmity between them. So in a way the prosecution has proved motive for the crime in question.

12. The evidence of eye witnesses is also corroborated by other circumstantial evidence. It has come on record that accused Ramesh Patil was arrested on 31-7-1988. When he was in Police custody he made a statement before Police in presence of panchas that he would produce Sattur and banian which he has wearing at the relevant time and concealed by him. Accordingly Police drew memorandum and then accused led police and panchas to the room of one Umesh Satham Exh.15 and there he produced Sattur and banian concealed behind one photo. Prosecution has examined pancha witness Taiyab A. Momin Exh.31. He has supported the prosecution version in this behalf. The Investigating Officer P.I. Labade Exh.20 has also deposed accordingly. So we do find that accused no.3 produced sattur. Not only that when said sattur was sent to C.A., C.A. opined that human blood was found on the said sattur. It is true that C.A. was not i a position to classify the group of the said blood. However it matters very little. As the eye witnesses have categorically stated that at the relevant time accused Ramesh used sattur while assaulting Raju and sattur has been discovered from the accused and stains of human blood were found on

said sattur. It must be said that this evidence connects the accused with the alleged crime. While considering the evidence regarding weapon, the learned Advocate for the accused strenuously argued before us that Dr.Pushpanjali Patil Exh.63 has stated that if weapon like Article 15 sattur is used by accused it will certainly cause semi round wound, but doctor did not find any round shape injury. But merely from this we cannot jump to the conclusion that testimony of eye witnesses is not trustworthy. On the contrary it must also be noted that doctor Patil has stated that if a weapon like sattur is used by blade side then it will cause transverse wound. Injury no.2 described in post mortem report Exh.64 is such injury. So, there is no substance in the argument advanced by the learned Advocate for the defence in this behalf. The banian which was produced by accused Ramesh and attached under panchnama drawn as per Section 27 of the Evidence Act found having blood stains. C.A. has opined vide Exh.88 that the said blood was of B group. Admittedly the blood group of deceased Raju was also B. So this is another clinching circumstance which connects the accused with the alleged crime.

13. PW 6 Shrikant Vhatkar Exh.38 has stated that when Dilip was in the police custody he made a statement before Police that he would produce the knife concealed by him and accordingly Police drew

memorandum and then the said accused led Police and panchas to one school and thereafter reaching near the stair case, accused put his hand in the whole which was to the wall of the stair case and produced one knife and Police attached the same under panchnama Exh.46. The evidence of pancha witness is not shaken or shattered in the cross examination. The same was also corroborated by the Investigating Officer P.I. Labade Exh.68. The said knife was also found having human blood stains. So this also supports the version of prosecution.

14. It is crystal clear from the evidence on record that Raju succumbed the injuries sustained by him practically immediately after the incident. Doctor has also categorically stated that death was caused due to shock due to haemorrhage due to multiple injuries. The learned Advocate for the defence canvassed before us that as none of the injury was on vital part, it cannot be said that there was intention on the part of the accused to murder Raju. However, we find that accused persons had attacked Raju with deadly weapons like sattur and knife and even given threats to prosecution witness Nandkumar V. Jadhav PW 16 when he was about to intervene. This conduct clearly indicates the intention of the accused. Merely because none of the blow lended on vital part of Raju we cannot jump to the conclusion that intention of the accused was not to commit

murder. In fact in the instant case the facts mentioned above coupled with the fact that at the relevant time Raju was unarmed clearly goes to show that intention of the accused was to commit murder. In fact in similar such circumstances, in a case State of Andhra Pradesh V/s Rayavarapu Punnayya and Anr. reported in AIR 1977 SC 45, Their Lordships have also held that the mere fact that the beating was designedly confined by the assailants to the legs and arms or that none of the multiple injuries inflicted was individually sufficient in the ordinary course of nature to cause death, would not exclude the application of Clause thirdly of section 300. In the instant case doctor has specifically stated that injuries taken collectively were sufficient to cause death and death has been caused as a result of the said injuries. This is not a case where death is caused due to any subsequent complication or due to any other factor. Cause of death is injuries sustained by the accused. Having regard to the nature and manner in which accused attacked Raju when he was alone and unarmed, we have no hesitation to hold that intention of the accused was to commit murder.

15. Thus, from the evidence on record we have no hesitation to hold that the 2nd Additional Sessions Judge, Kolhapur has rightly convicted the original accused nos.3 and 9 for the offence punishable under

Section 302 read with 34 of I.P.C. There is no necessity to interfere with the said order. Hence the order of conviction and sentence passed against the accused in Sessions Case No.155 of 1988 by the Additional Sessions Judge, Kolhapur is confirmed. The appeal is dismissed.

. The accused to surrender their bail forthwith.

(S.S.PARKAR, J.)

(S. R. SATHE, J.)